

APPEAL NO. 042374
FILED NOVEMBER 10, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 27, 2004. The hearing officer determined that: (1) the respondent's (claimant) compensable injury of (date of injury), extends to C4-5 disc extrusion, C5-6 disc bulge, and spondylosis in several levels of her cervical spine; (2) the claimant's impairment rating (IR) is 15%; (3) the claimant had disability from February 16 through March 23, 2004; and (4) the Texas Workers' Compensation Commission (Commission) properly authorized the claimant to change her treating doctor in February 2004 from Dr. R to Dr. SW. The appellant (self-insured) appealed the hearing officer's extent-of-injury, IR, and disability determinations, arguing that these determinations are against the great weight and preponderance of the evidence. Additionally, the self-insured asserts that the hearing officer exceeded his authority in finding that the claimant had C7 radiculopathy and spondylosis at the C6 level. The appeal file does not contain a response from the claimant. The hearing officer's change of treating doctor determination has not been appealed, and has become final pursuant to Section 410.169.

DECISION

Affirmed in part, as reformed, reversed and remanded in part.

We note that the hearing officer's Finding of Fact No. 4 and Conclusion of Law No. 3 contains a typographical error listing the date of the compensable injury as (incorrect date of injury), rather than (date of injury). We reform Finding of Fact No. 4 and Conclusion of Law No. 3 to state that the date of the compensable injury is (date of injury).

The parties stipulated that on (date of injury), the claimant sustained a compensable injury to her neck; that the self-insured has accepted compensability of only a cervical sprain/strain; and that the Commission-appointed designated doctor, Dr. M certified that the claimant reached maximum medical improvement on March 23, 2004.

EXTENT-OF-INJURY

The extent-of-injury issue was phrased "Does the Claimant's compensable injury of (date of injury), extend to and include a cervical injury of C4-5 disc extrusion, C5-6 disc bulge, and spondylosis?" We first address the self-insured's assertion that the hearing officer exceeded the scope of the extent-of-injury issue in determining the claimant had C7 radiculopathy and C6-7 spondylosis. We have previously held that the 1989 Act created an "issue-driven" system of adjudication that generally restricts a hearing officer to resolve the issue before the hearing officer and not to exceed the

scope of that issue. See Texas Workers' Compensation Commission Appeal No. 990164, decided March 15, 1999; Texas Workers' Compensation Commission Appeal No. 990229, decided March 19, 1999. Section 410.151(b) of the 1989 Act provides that an issue not raised at the benefit review conference may not be considered at the CCH unless the parties consent to the additional issue or the hearing officer finds good cause for adding the issue.

With regard to radiculopathy at the C7 level, the parties actually litigated the issue of whether there was radiculopathy in attempting to resolve the IR issue. The self-insured argued that Dr. M's certification of 15% IR based on Diagnosis-Related Estimate (DRE) Category III: Radiculopathy of the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides) was incorrect. The self-insured's attorney questioned extensively its own expert witness, required medical examiner (RME) doctor, Dr. T, at the CCH, without objection, about whether there was C7 radiculopathy. The hearing officer's finding that there was C7 radiculopathy is supported by the medical records in evidence, including the MRI dated November 12, 2003. We perceive no error.

With regard to spondylosis, the hearing officer found the claimant's compensable injury extends to include spondylosis at several cervical spinal levels including C6-7. Our review of the record reflects that there is no medical or testimonial evidence to support a finding of spondylosis at level C6-7, however, the record supports a finding of spondylosis at level C4-5. The hearing officer's spondylosis determination is against the great weight and preponderance of the evidence. Accordingly, we reverse the part of the hearing officer's Finding of Fact No. 4, Conclusion of Law No. 3, and the decision with regard to spondylosis that states the compensable injury extends to spondylosis of several cervical spinal levels including C6-7 and remand back to the hearing officer to make findings of fact and conclusions of law regarding spondylosis which are supported by the evidence.

IR

In its appeal, the self-insured argues that the hearing officer erred in giving presumptive weight to the designated doctor's 15% IR and instead should award the 5% certified by Dr. T. The difference in the ratings of Dr. T and Dr. M is attributable to the fact that Dr. M placed the claimant in DRE Cervicothoracic Category III: Radiculopathy and assigned her a 15% IR from Table 73 of the AMA Guides while Dr. T placed the claimant in DRE Category II and assigned a 5% IR from Table 73. In the narrative report accompanying his Report of Medical Evaluation (TWCC-69), the designated doctor noted based upon his examination of the claimant there were EMG findings consistent with "subtle C7 chronic radiculopathy." Dr. T and Dr. C, a peer reviewer, maintained that all of the factors listed in the AMA Guides must be satisfied to find radiculopathy and seemed to require the designated doctor to use the Differentiators in Table 71, when in fact those Differentiators are optional, if the doctor is questioning which category is appropriate. See AMA Guides, page 99. We cannot agree with the

carrier that the evidence contrary to the designated doctor's opinion rises to the level of the great weight of the other medical evidence. Rather, this is a case where there is a difference of medical opinion between the designated doctor and the RME doctor as to whether or not the claimant has radiculopathy and, thus, whether she is properly rated under DRE Category II or Category III.

Section 408.125(c) provides that where there is a dispute as to IR, the report of the Commission-selected designated doctor is entitled to presumptive weight unless it is contrary to the great weight of the other medical evidence. We have held that no other doctor's report is accorded the special, presumptive status accorded to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992; Texas Workers' Compensation Commission Appeal No. 93825, decided October 15, 1993. Further, in according the designated doctor presumptive weight, the 1989 Act provides a mechanism for accepting the designated doctor's resolution of differences of medical opinions. Texas Workers' Compensation Commission Appeal No. 001659, decided August 25, 2000. Nothing in our review of the record indicates that that determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for disturbing it on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

DISABILITY

We have reviewed the complained-of disability determination and conclude that this issue involved a question of fact for the hearing officer. The hearing officer reviewed the record and decided what facts were established. The evidence supports the hearing officer's disability determination. We conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

We affirm, as reformed, the hearing officer's extent-of-injury determination regarding C4-5 disc extrusion and C5-6 disc bulge. We affirm the hearing officer's IR and disability determinations.

We reverse the hearing officer's extent-of-injury determination regarding spondylosis and we remand back to the hearing officer to make findings of fact and conclusions of law regarding spondylosis which are supported by the evidence.

The true corporate name of the insurance carrier is **(a self-insured governmental fund)** and the name and address of its registered agent for service of process is

(NAME)
(ADDRESS)
(CITY), TEXAS (ZIP CODE)

Veronica L. Ruberto
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge